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In the Supreme Court of the United States

OCTOBER TERM, 1934

THE UNITED STATES, PETITIONER

v.

THE STATE OF CALIFORNIA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

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The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit, entered in the above case on January 28, 1935, reversing the judgment of the United States District Court for the Northern District of California.

OPINION BELOW

The opinion of the Circuit Court of Appeals is reported in 75 F. (2d) 41.

JURISDICTION

The judgment sought to be reviewed was entered on January 28, 1935. The jurisdiction of this

Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the State of California in the operation of the state owned State Belt Road is a common carrier and therefore subject to the so-called Federal Safety Appliance Act of March 2, 1893, as amended by the Acts of April 1, 1896 and March 2, 1903. (U. S. C., Title 45, Secs. 1–10.)

2. Whether the United States District Court below had jurisdiction of the present suit to collect from the State the penalty prescribed for violation of said Safety Appliance Act.

STATUTES INVOLVED

The statutes involved will be found in the Appendix, *infra,* pp. 10–11.

STATEMENT

The Government's complaint charged the State of California as a common carrier engaged in interstate commerce with violating the provisions of the Safety Appliance Act in that it hauled over its line of railroad a car out of repair because the uncoupling lever was disconnected from the lock lift of the coupler, thus necessitating a man going between the ends of cars to couple or uncouple said cars (R. 2 et seq.). The State entered a special appearance and demurrer claiming that this Court had exclusive jurisdiction of the suit (R. 6). The

demurrer was overruled (R. 7), and the State filed an answer setting up, in substance, that in operating the railroad it was "performing a governmental function" (R. 7–12). The case was thereupon submitted to the court upon the Government's motion for judgment on a stipulation of facts (R. 14). Motion for judgment was thereafter granted (R. 14–15).

The stipulated facts disclose that the State Belt Railroad, owned by the State of California, is located wholly within the City and County of San Francisco, California, and is approximately five miles in length; that it has a physical connection with one railroad and connects by freight-car ferries with three other railroads, all engaged in interstate commerce (R. 21); that it serves 175 industries, and 45 wharves, car ferries, and freight yards in the movement of loaded and empty cars; that it moves all carload freight as well as empty cars in the area mentioned whether such cars be consigned to or without the State of California; that it moves all cars offered to it by the industries, steamship companies, four common-carrier roads, and other shippers, whether said cars originate within or without the State (R. 22); that it charges a flat rate per car for the service it renders (R. 23); that during the year 1932 a large majority of the carload shipments of freight handled were moved in interstate commerce (R. 24–25); that the Belt Railroad is operated without profit, for the benefit of the people of California, and to promote and facilitate

commerce through the Port of San Francisco (R. 26); that on February 20, 1932, it moved a car loaded with rice destined for Hawaii, which car had its car coupling and uncoupling apparatus so out of repair as to require a man to go between the ends of the cars to effect such coupling and uncoupling (R. 27).

On appeal the judgment of the District Court was reversed, the Circuit Court of Appeals holding, in substance, that in operating the railroad the State was performing a governmental function and, furthermore, that this Court had exclusive jurisdiction of the suit to collect the penalty here involved.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals for the Ninth Circuit erred:

1. In holding that the State was not subject to the Safety Appliance Act.

2. In holding that this Court has exclusive jurisdiction of a suit to collect from a State a penalty for violation of the Safety Appliance Act.

3. In reversing the judgment of the District Court.

REASONS FOR GRANTING THE WRIT

1. The questions presented are plainly of general importance, and their authoritative determination by this Court seems essential for future guidance in cases involving state operation of railroads.

2. Under the decision of the court below, the only remedy open for enforcement of penalties against a State operating a common carrier in interstate commerce for violations of the Safety Appliance Act is by original proceeding in this Court. Whether the statutes vest exclusive original jurisdiction in this Court to entertain actions of this character for the recovery of small penalties, in which, it has been assumed heretofore, the defendant is entitled to a jury trial as of right, is an important question of Federal law which has not been, but should be, settled by this Court.

3. The decision of the court below holding that the State of California was not amenable to suit in the District Court for violation of the Safety Appliance Act appears to be contrary to the decisions of this Court in what are deemed to be analogous cases.

The court below has interpreted this Court's decision in *Sherman* v. *United States,* 282 U. S. 25, as having already adjudicated that the operation of the Belt Railroad involved in this case has not caused the State of California to become a common carrier. In that case this Court clearly did not determine that the State was not a common carrier subject to the provisions of the Safety Appliance Act, saying at page 30:

> 'Manifestly if we are right in what we have said the judgment is wrong and we are relieved from the duty of considering whether

the Safety Appliance Act should be construed to embrace the State.

Contrary to the ruling of the court below, the record facts plainly establish common carrier activities by the State in interstate commerce within the reach of the Safety Appliance Act. In an earlier case, in 1924, the court below held that the same Belt Railroad involved in this case was a common carrier engaged in interstate commerce. *McCallum* v. *United States,* 298 Fed. 373, 375, certiorari denied, 266 U. S. 606. Cf. *United States* v. *Brooklyn Eastern District Terminal,* 249 U. S. 296; *United States* v. *Union Stock Yard,* 226 U. S. 286; *United States* v. *Atlanta Terminal Co.,* 260 Fed. 779, certiorari denied, 251 U. S. 559; *Mathewes* v. *Port Utilities Commission,* 32 F. (2d) 913 (S. C.).

The operation of the railroad here involved was not a governmental activity on the part of the State, although it may have been undertaken for the public good and without profit. *Helvering* v. *Powers,* 293 U. S. 214.

In any event, the operation by the State of the railroad in interstate commerce was subject to regulation by the Federal Government. *Board of Trustees* v. *United States,* 289 U. S. 48. In that case this Court held that the commerce power is exclusive and plenary and that its exercise may not be limited, qualified, or impeded to any extent by state action.

Pursuant to this power to regulate commerce, Congress adopted the Safety Appliance Act, *infra,*

p. 10. That Act, among other things, provides that "any common carrier engaged in interstate commerce by railroad" shall be liable to a penalty of $100 for each violation of certain provisions of the Act, to be recovered in a suit "to be brought by the United States district attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed." The purpose of the Act was to promote the safety of employees and travelers upon railroads. The evident intent of Congress was that the Act should cover all common carriers engaged in interstate commerce by railroad. Employees and travelers upon state owned and operated railroads are entitled to the protection of safety measures equally with employees and travelers upon railroads not operated by States. The State of California, as has been shown, was a common carrier within the meaning of the Act, and as such was subject to the provisions of the Act.

The court below has held that a suit against the State for collection of the penalty prescribed in the Act may be brought only in this Court. In this respect we submit that the court below has erred. The reasonable construction of the Act is that Congress intended that suits for enforcement of penalties against States operating common carriers in interstate commerce should be brought in the District Courts in the same manner as suits against other common carriers. In a suit brought

against it under the Act, a State would doubtless be entitled to a jury trial. Jury trials in the District Courts are the usual thing; in this Court, the unusual. The amounts involved in these suits are small. Violations occur frequently. They may take place in regions remote from Washington. There the witnesses necessary to sustain or defend the suit are to be found. There the defendant is. In this case the railroad violating the Act is in San Francisco. It cannot be reasonably assumed that Congress intended to impose upon States which might operate common carriers the duty of sending counsel and witnesses to Washington to defend before this Court an original suit for the recovery of a penalty of $100. Nor can it be assumed that Congress intended to have this Court bear the burden of trying cases of this character. But most certainly Congress did intend the Act to apply to all common carriers in interstate commerce by railroad, a state-operated railroad as well as a privately operated road.

If it be clear, and we submit it is, that Congress intended to vest in the District Courts jurisdiction of suits against States which operate common carriers within the meaning of the Safety Appliance Act, then that Act impliedly repeals so much of the earlier Judiciary Act granting exclusive jurisdiction to this Court as is inconsistent with the later Act. *United States* v. *Tynen,* 11 Wall. 88, 92; *United States* v. *Yuginovich,* 256 U. S. 450, 463.

The court below in this connection stated that, assuming this repeal by implication did take place, the "reenactment" in 1911 in the Judicial Code and in 1926 in the United States Code of the provision of the original Judiciary Act operated by the same token to repeal the provision of the Safety Appliance Act. It is submitted that the court below mistakenly considered the inclusion in the codes of the provision of the original Judiciary Act as reenactments of that provision. The codes themselves provide that they shall not have that effect. Judicial Code, Sec. 294; U. S. C., page 1. See *Smiley* v. *Holm,* 285 U. S. 355, 373.

The vesting by Congress in the lower Federal courts of jurisdiction of that class of cases in which this Court has original jurisdiction meets with no constitutional objection. *Bors* v. *Preston,* 111 U. S. 252; *Ames* v. *Kansas,* 111 U. S. 449.

Wherefore it is respectfully submitted that this petition should be granted.

STANLEY REED,
Solicitor General.

APRIL 1935.

APPENDIX

Section 2 of the Safety Appliance Act of March 2, 1893, c. 196, 27 Stat. 531 (U. S. C., Title 45, Sec. 2), provides:

> It shall be unlawful for any common carrier engaged in interstate commerce by railroad to haul or permit to be hauled or used on its line any car used in moving interstate traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars.

Section 6 of the Act, as amended April 1, 1896, c. 87, 29 Stat. 85 (U. S. C., Title 45, Sec. 6) provides:

> Any common carrier engaged in interstate commerce by railroad using any locomotive engine, running any train, or hauling or permitting to be hauled or used on its line any car in violation of any of the preceding provisions of this chapter, shall be liable to a penalty of $100 for each and every such violation, to be recovered in a suit or suits to be brought by the United States district attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed; and it shall be the duty of such district attorney to bring such suits upon duly verified information being lodged with him of such violation having occurred; * * *.

Section 233 of the Judicial Code (U. S. C., Title 28, Sec. 341) provides:

> The Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature where a State is a party, except between a State and its citizens, or between a State and citizens of other States, or aliens, in which latter cases it shall have original, but not exclusive, jurisdiction. * * *

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